

Department of Commerce

1352.235-70

or subcontract it has performed or is performing which involves work directly related to the purpose of this contract. The contractor also certifies and agrees that any and all work performed under this contract shall be directly and exclusively for the use and benefit of the Government, and not incidental to any other work, pursuit, research, or purpose of the contractor, whose responsibility it will be to account for it accordingly.

(End of clause)

[75 FR 10570, Mar. 8, 2010; 75 FR 14496, Mar. 26, 2010]

1352.233-70 Agency protests.

As prescribed in 48 CFR 1333.103(a), insert the following provision:

AGENCY PROTESTS (APR 2010)

(a) An agency protest may be filed with either: (1) The contracting officer, or (2) at a level above the contracting officer, with the appropriate agency Protest Decision Authority. *See* 64 FR 16,651 (April 6, 1999).

(b) Agency protests filed with the Contracting Officer shall be sent to the following address: [Insert Contracting Officer name and Address]

(c) Agency protests filed with the agency Protest Decision Authority shall be sent to the following address: [Insert appropriate Protest Decision Authority name and Address]

(d) A complete copy of all agency protests, including all attachments, shall be served upon the Contract Law Division of the Office of the General Counsel within one day of filing a protest with either the Contracting Officer or the Protest Decision Authority.

(e) Service upon the Contract Law Division shall be made as follows: U.S. Department of Commerce, Office of the General Counsel, Chief, Contract Law Division, Room 5893, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230. FAX: (202) 482-5858.

(End of clause)

[75 FR 10570, Mar. 8, 2010; 75 FR 14496, Mar. 26, 2010]

1352.233-71 GAO and Court of Federal Claims protests.

As prescribed in 48 CFR 1333.104-70(a), insert the following provision:

GAO AND COURT OF FEDERAL CLAIMS PROTESTS (APR 2010)

(a) A protest may be filed with either the Government Accountability Office (GAO) or the Court of Federal Claims unless an agency protest has been filed.

(b) A complete copy of all GAO or Court of Federal Claims protests, including all attachments, shall be served upon (i) the Contracting Officer, and (ii) the Contract Law Division of the Office of the General Counsel, within one day of filing a protest with either GAO or the Court of Federal Claims.

(c) Service upon the Contract Law Division shall be made as follows: U.S. Department of Commerce, Office of the General Counsel, Chief, Contract Law Division, Room 5893, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230. FAX: (202) 482-5858.

(End of clause)

[75 FR 10570, Mar. 8, 2010; 75 FR 14496, Mar. 26, 2010]

1352.235-70 Protection of human subjects.

As prescribed in 48 CFR 1335.006(a), insert the following provision:

PROTECTION OF HUMAN SUBJECTS (APR 2010)

(a) Research involving human subjects is not permitted under this award unless expressly authorized in writing by the Contracting Officer. Such authorization will specify the details of the approved research involving human subjects and will be incorporated by reference into this contract.

(b) The Federal Policy for the Protection of Human Subjects (the "Common Rule"), adopted by the Department of Commerce at 15 CFR Part 27, requires contractors to maintain appropriate policies and procedures for the protection of human subjects in research. The Common Rule defines a "human subject" as a living individual about whom an investigator conducting research obtains data through intervention or interaction with the individual, or identifiable private information. The term "research" means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. The Common Rule also sets forth categories of research that may be considered exempt from 15 CFR Part 27. These categories may be found at 15 CFR 27.101(b).

(c) In the event the human subjects research involves pregnant women, prisoners, or children, the contractor is also required to follow the guidelines set forth at 45 CFR Part 46 Subpart B, C and D, as appropriate, for the protection of members of a protected class.

(d) Should research involving human subjects be included in the proposal, prior to issuance of an award, the contractor shall submit the following documentation to the Contracting Officer:

(1) Documentation to verify that contractor has established a relationship with

an appropriate Institutional Review Board (“cognizant IRB”). An appropriate IRB is one that is located within the United States and within the community in which the human subjects research will be conducted;

(2) Documentation to verify that the cognizant IRB possesses a valid registration with the United States Department of Health and Human Services’ Office for Human Research Protections (“OHRP”);

(3) Documentation to verify that contractor has a valid Federal-wide Assurance (FWA) issued by OHRP.

(e) Prior to starting any research involving human subjects, the contractor shall submit appropriate documentation to the Contracting Officer for institutional review and approval. This documentation may include:

(1) Copies of the human subjects research protocol, all questionnaires, surveys, advertisements, and informed consent forms approved by the cognizant IRB;

(2) Documentation of approval for the human subjects research protocol, questionnaires, surveys, advertisements, and informed consent forms by the cognizant IRB;

(3) Documentation of continuing IRB approval by the cognizant IRB at appropriate intervals as designated by the IRB, but not less than annually; and/or

(4) Documentation to support an exemption for the project from the Common Rule [Note: this option is not available for activities that fall under 45 CFR Part 46 Subpart C].

(f) In addition, if the contractor modifies a human subjects research protocol, questionnaire, survey, advertisement, or informed consent form approved by the cognizant IRB, the contractor shall submit a copy of all modified material along with documentation of approval for said modification by the cognizant IRB to the Contracting Officer for institutional review and approval. The contractor shall not implement any IRB approved-modification without written approval by the Contracting Officer.

(g) No work involving human subjects may be undertaken, conducted, or costs incurred and/or charged to the project, until the Contracting Officer approves the required appropriate documentation in writing.

(End of provision)

[75 FR 10570, Mar. 8, 2010; 75 FR 14496, Mar. 26, 2010]

1352.235-71 Protection of human subjects—exemption.

As prescribed in 48 CFR 1335.006(b), insert the following clause:

PROTECTION OF HUMAN SUBJECTS (APR 2010)

(a) Contractor has satisfied the requirements set forth in solicitation # _____, re-

lated to the Protection of Human Subjects in research. The Government has determined that the research involving human subjects to be conducted under this contract is exempt from the requirements of the Common Rule for the Protection of Human Subjects. The exemption memorandum executed by the Government and the attachments are hereby incorporated by reference into this contract. If contractor uses an informed consent form for the exempt research, contractor must use the informed consent form contained in the attachments in its conduct of research involving human subjects under this contract.

(b) If the conditions upon which the exemption is based should change in any way, contractor shall immediately notify the Contracting Officer in writing of the specified change. The Government will review the change and make a determination as to whether the change requires a change to the exemption approval. Contractor shall not proceed until notified in writing of the Contracting Officer’s approval. Contractor shall obtain prior written approval from the Contracting Officer for any change to the existing human subjects protocol or informed consent form before proceeding.

(c) No other research involving human subjects is permitted under this award unless expressly authorized in writing by the Contracting Officer. Such writing will specify the details of the approved research involving human subjects and will be incorporated by reference into this contract.

(d) The Federal Policy for the Protection of Human Subjects (the “Common Rule”), adopted by the Department of Commerce at 15 CFR Part 27, requires contractors to maintain appropriate policies and procedures for the protection of human subjects in research. The Common Rule defines a “human subject” as a living individual about whom an investigator conducting research obtains data through intervention or interaction with the individual, or identifiable private information. The term “research” means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.

(e) The Common Rule also sets forth categories of research that may be considered exempt from this policy. These categories may be found at 15 CFR 27.101(b).

(f) In the event the human subjects research involves pregnant women, prisoners, or children, contractor is also required to follow the guidelines set forth at 45 CFR Part 46 Subpart B, C and D, as appropriate, for the protection of members of a protected class.